

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 21, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP2778

Cir. Ct. No. 2010SC799

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

KELLY WAYNE LAMBERT,

PLAINTIFF-RESPONDENT,

V.

JONSON & FAULKNER, LLC,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Monroe County:
MARK L. GOODMAN, Judge. *Affirmed.*

¶1 VERGERONT, P.J.¹ This small claims action arises out of a contract dispute between Kelly Lambert and Jonson & Faulkner, LLC (J&F). Lambert alleges that J&F breached the parties' construction agreement when it

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) and (3) (2009-10).

failed to pay him amounts he was owed under the agreement. The circuit court concluded that Lambert had satisfied his obligations under the agreement and that J&F breached the agreement when it failed to pay the amount it owed to Lambert. J&F contends that the circuit court erroneously relied on extrinsic evidence to interpret the unambiguous agreement. We conclude that the agreement is ambiguous, and therefore the circuit court properly considered extrinsic evidence. Accordingly, we affirm.

BACKGROUND

¶2 In April 2010, J&F began discussions with Lambert to purchase his property located at 1016 Superior Avenue in Tomah, Wisconsin. J&F was represented in these discussions by Judy Jonson-Faulkner, one of its members. The parties eventually entered into an offer to purchase. As part of this offer, Lambert was to do some remodeling work prior to the closing. The relationship between the parties subsequently became strained. At the closing on May 21, 2010, Lambert demanded additional reimbursement of \$7000 for construction costs he had incurred.

¶3 As a result of this demand, the parties entered into the construction agreement, signed May 21, 2010. This agreement in its entirety provides:

Construction Agreement For property located at: 1016 Superior Ave Tomah, WI 54660. The seller, Kelly Lambert and buyer, Jonson & Faulkner, LLC hereby agree that seller will be paid an amount not to exceed \$7,000 from buyer upon all sign (sic) lien waivers, approved receipts and invoices for materials and labor of seller and any subcontractors.

It is “signed in good faith” by Kelly Lambert and Judy Faulkner² for J&F, and witnessed by Jason Krultz.

¶4 Shortly after signing the agreement, Lambert submitted signed lien waivers and receipts and invoices totaling over \$13,000. J&F did not approve any of these receipts or invoices for a variety of reasons, and therefore refused to make any payments under the agreement. Lambert then initiated this action.

¶5 After the small claims trial, at which both Lambert and Jonson-Faulkner testified, the circuit court concluded that J&F had breached the agreement. It found that Lambert satisfied his obligations under the agreement when he submitted lien waivers and receipts and invoices to J&F. The court also found that under the agreement, J&F was not free to decline to pay the receipts and invoices for labor and materials used on the property. The court therefore ordered J&F to pay Lambert \$5000, the limit for a small claims action.

DISCUSSION

¶6 On appeal, J&F argues that the court erroneously considered extrinsic evidence in construing the unambiguous agreement.

¶7 The primary goal in contract interpretation is to give effect to the parties’ intentions, as expressed by the language of the contract. *Seitzinger v. Community Health Network*, 2004 WI 28, ¶22, 270 Wis. 2d 1, 676 N.W.2d 426. We interpret contract language consistent with what a reasonable person would understand the words to mean under the circumstances. *Id.* When the contract

² Though Jonson-Faulkner signed the agreement as Judy Faulkner, she testified that her last name is actually Jonson-Faulkner.

terms are clear and unambiguous, we construe the contract according to its literal terms. *Maryland Arms Ltd. P'ship v. Connell*, 2010 WI 64, ¶23, 326 Wis. 2d 300, 786 N.W.2d 15. Whether a contract is ambiguous is a question of law, which we review de novo. *Shadley v. Lloyds of London*, 2009 WI App 165, ¶12, 322 Wis. 2d 189, 776 N.W.2d 838. “Contract language is considered ambiguous if it is susceptible to more than one reasonable interpretation.” *Kernz v. J.L. French Corp.*, 2003 WI App 140, ¶10, 266 Wis. 2d 124, 667 N.W.2d 751 (citation omitted). When a contract is ambiguous, the court may consider evidence extrinsic to the contract to determine the parties’ intent. *Maryland Arms Ltd. P'ship*, 326 Wis. 2d 300, ¶23.

¶8 J&F contends that the agreement unambiguously gives it unilateral authority to approve receipts and invoices because there is no other reasonable interpretation of the agreement. We disagree.

¶9 The dispute in this case is over the meaning of “approved” in the agreement. The agreement refers to “approved receipts and invoices,” but does not clearly indicate how the parties are to determine whether specific receipts and invoices are approved. J&F contends that an interpretation granting Lambert the right to approve his own receipts and invoices is “unreasonable.” However, J&F presents no developed argument as to why this interpretation is unreasonable and an interpretation granting J&F sole authority to approve receipts is not. Furthermore, contrary to J&F’s argument, the agreement does not clearly grant J&F sole authority to approve receipts and invoices for any reason. There is nothing in the agreement regarding the permissible bases for approval or disapproval. Because the agreement does not clearly indicate how, and by whom, the receipts and invoices are to be approved, it is ambiguous.

¶10 Because we conclude that the agreement is ambiguous, we must consider extrinsic evidence to ascertain the parties' intent. "Where a contract is ambiguous and requires a resort to extrinsic evidence to resolve its meaning, the question is one of fact." *Tang v. C.A.R.S. Prot. Plus, Inc.*, 2007 WI App 134, ¶33, 301 Wis. 2d 752, 734 N.W.2d 169 (citation omitted). We accept the circuit court's factual findings unless they are clearly erroneous. *Lellman v. Mott*, 204 Wis. 2d 166, 171, 554 N.W.2d 525 (Ct. App. 1996). We also defer to the circuit court's determination of the credibility of the witnesses. *Fidelity & Deposit Co. of Maryland v. First Nat. Bank of Kenosha*, 98 Wis. 2d 474, 485, 297 N.W.2d 46 (Ct. App. 1980).

¶11 After hearing the testimony of the parties and reviewing the evidence, the circuit court concluded that the parties' rights and obligations under the agreement were as follows. Lambert was required to provide signed lien waivers, as well as invoices and receipts indicating the expenses he had incurred for labor and materials in regard to the building. There was no limitation as to when Lambert had incurred these expenses. J&F was free to reject receipts and invoices only for labor and materials that were not put into the building.

¶12 The circuit court's findings are supported by the record. Lambert testified that when the agreement was drafted, the parties agreed that receipts were to be approved as long as they were for work done on the property. He added that there was no approval process because the agreement "says for work in the above property, and the address for the property is right there for the building [J&F] had purchased from [him]...." Jonson-Faulkner stated that Lambert's description "wasn't [her] recollection of the conversation," but she could not say that what Lambert testified to was not true. Jonson-Faulkner testified that, in her understanding, all construction expenses Lambert incurred before the closing were

covered by the sale contract and paid for by proceeds from the closing. Thus, she believed that the construction agreement at issue in the case obligated J&F to pay only for expenses Lambert incurred after May 21, 2010, the date the agreement was signed and the date of the closing. The court's conclusions indicate that it found Lambert's testimony more credible than that of Jonson-Faulkner.

CONCLUSION

¶13 The circuit court properly considered extrinsic evidence to ascertain the parties' intent and its factual findings are supported by the record. Accordingly, we affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

